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ACTIVITIES OF THE INTERNATIONAL ATOMIC ENERGY AGENCY RELEVANT TO ARTICLE V OF THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS

Background Paper Prepared by the Secretariat of the IAEA

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ARTICLE V OF THE NPT

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear weapon States. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

I. INTRODUCTION

1. Under Article III.A.1 of the Statute of the International Atomic Energy Agency ("IAEA" or "Agency"), the IAEA is authorized "to encourage and assist research on, and development and practical application of, atomic energy for peaceful uses through the world", to act on request "as an intermediary for the purposes of securing the performance of services ... by one member of the Agency for another", and "to perform any operation or service useful in research on, or development or practical application of, atomic energy for peaceful purposes".

2. In September 1968, the United Nations Conference of Non-Nuclear Weapon States (CNNWS) made a number of recommendations related to activities coming within the purview of the IAEA. The CNNWS recommended, in relation to the question of nuclear explosions for peaceful purposes (PNEs), that the IAEA initiate the necessary studies deemed advisable on the Agency's possible functions in this field. It also called upon the IAEA to continue its utmost efforts for compilation and dissemination of public information concerning the peaceful uses of nuclear energy including those related to the peaceful application of nuclear explosions[1].

3. Also in September 1968, the General Conference of the IAEA requested that the Director General initiate studies of the procedures that the IAEA should employ in performing the role

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[1] United Nations document A/7277, resolutions H.IV and H.I.

envisaged for an international body under Article V of the NPT and that the Board of Governors of the IAEA review the results of these studies and to report thereon[2].

4. Subsequently, the United Nations General Assembly took note of the resolutions adopted by the CNNWS and invited the IAEA, specialized agencies and other international bodies concerned to report to the Secretary-General on the action taken by them in connection with the recommendations contained in the resolutions of the CNNWS[3]; took note of the action taken by the IAEA's General Conference[4]; and requested the Secretary-General to prepare a report on the establishment within the framework of the IAEA of an international service for nuclear explosions for peaceful purposes under appropriate international control[5].

5. The IAEA's responsibility and technical competence in the field of nuclear explosions for peaceful purposes (PNEs), as well as its role under Article V of the Treaty on the Non-Proliferation of Nuclear Weapons ("NPT")[6], were recognized by the Board of Governors and the General Conference of the IAEA in 1969[7].

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2 General Conference resolution GC(XII)/RES/245.

3 General Assembly resolution 2456A (XXIII).

4 General Assembly resolution 2457 (XXIII).

5 General Assembly resolution 2456C (XXIII).

6 The NPT had been opened for signature on 1 July 1968.

7 IAEA Document GC(XIII)/410.

6. The activities performed by the Agency in that context during the period 1969 to February 1976 were described in the IAEA's report to the First Review Conference of Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), "IAEA Activities under Article V of NPT: Analytical and Technical Report" (NPT/CONF/12 and Add.1). Over the succeeding years, the IAEA has submitted to the NPT Review Conferences reports on its activities in the field of PNEs. These reports may be found in NPT/CONF.II/8 (1980), NPT/CONF.III/11 (1985) and NPT/CONF.IV/14 (1990).

7. In the Final Declaration of the First Review Conference, which took place in Geneva in 1975, the Parties to the NPT recognized the IAEA's responsibility and technical competence in connection with PNEs[8] (see Annex 1). The Conference considered the IAEA to be the appropriate international body, referred to in Article V of the Treaty, through which potential benefits from PNEs could be made available to any non-nuclear-weapon State. It also commended the IAEA for its work in this field, and emphasized that the Agency should play the central role in matters relating to the provision of services for PNEs.

8. In 1985, the Third Review Conference of the Parties to the NPT reaffirmed, inter alia, the obligation of States Parties to take appropriate measures to ensure that potential benefits from any peaceful applications of nuclear explosions are made

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[8] NPT/CONF/35/I.

available to non-nuclear-weapon States Party to the Treaty[9] (see Annex 2). In addition, the Conference confirmed that the IAEA would be the appropriate international body through which any such potential benefits could be made available under Article V of the NPT. However, the Conference also noted that the potential benefits of the peaceful applications of nuclear explosions had not yet been demonstrated.

9. Although agreement was not reached on a Final Document for the Fourth Review Conference in 1990, the States Parties, in their consideration of Article V of the NPT, once again expressed the view that, if the potential for safe and peaceful applications of nuclear explosions were demonstrated, which it had not been, the IAEA would be the appropriate body through which any such applications would be made available to non-nuclear-weapon States.

II. IAEA ACTIVITIES RELATED TO PNEs

A. UNIT FOR PEACEFUL NUCLEAR EXPLOSIONS SERVICES

10. In January 1975, the IAEA established a unit in the Department of Technical Operations of the Agency to deal with the technological, economic and safety aspects of the use of PNEs. The unit was assigned responsibility for collecting and exchanging all relevant information, for taking action on the

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[9] NPT/CONF.III/64/I, Annex I.

various requests for PNE-related services and for surveying the economics of this and alternative technologies.

11. In 1981, the Department of Technical Operations was reorganized and became the Department of Nuclear Energy and Safety (NENS). Subsequently, responsibility for the subject of PNEs has been covered by the Radiological Safety Section of NENS.

B. AD HOC ADVISORY GROUP ON NUCLEAR EXPLOSIONS FOR PEACEFUL PURPOSES

12. By a resolution adopted on 11 June 1975, the IAEA's Board of Governors established an intergovernmental Ad Hoc Advisory Group on Nuclear Explosions for Peaceful Purposes, which met between September 1975 and August 1977.

13. One of the main tasks of the Advisory Group was to advise the Board, within the Agency's sphere of competence, on the structure and content of the agreement or agreements necessary under Article V of the NPT. The Group's report (GOV/1854, which was annexed to NPT/CONF.II/8) contained, inter alia, the possible content of such agreement(s) in the form of a list of principles to be considered in formulating international arrangements for providing nuclear explosions for peaceful purposes in accordance with the NPT and the possible structure of the agreement(s) in the form of four main alternative legal instruments.

14. The final report of the Advisory Group was submitted to the

Board of Governors, in response to which the Board resolved[10]:

- to keep the subject matter of the report under review and to continue consideration of the matter when appropriate;
- that the services of the Ad Hoc Advisory Group should continue to be available as required;
- to request the Director General to distribute the report to IAEA Member States and to the Secretary-General of the United Nations for the information of its Member States, and to keep the Member States and the Board informed of any developments concerning the subject matter of the report.

15. The Advisory Group has not met since 1977, although it could be re-convened at any time that new developments or requests by Member States made this appropriate.

C. REVIEW AND DISSEMINATION OF SCIENTIFIC AND TECHNICAL INFORMATION

16. The IAEA convened a series of international technical panels between 1970 and 1976[11]. No further technical panels have been convened on the subject, although the IAEA has continued to monitor the literature on PNEs and information on this topic is regularly entered into the IAEA's International Nuclear

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[10] IAEA document GOV/DEC/94(XX)/Rev.1, decision (50), (51).

[11] IAEA Proceedings STI/PUB/273, 298, 367, 414, 473.

Information System (INIS).

17. A glossary of relevant technical terms in four languages (English, French, Russian and Spanish) was completed and published in 1980[12].

18. A bibliography of literature related to PNEs was first published in 1967[13] and later revised and published in 1980[14].

D. REQUESTS FOR PNE-RELATED SERVICES

19. In 1976, in response to an invitation extended by the Egyptian Ministry of Electricity and Energy, an IAEA fact-finding mission to the Qattara Depression in Egypt was undertaken[15]. The mission did not lead to a request for specific PNE-related services. No other requests for PNE-related services or information have been received by the IAEA. Nor has the IAEA been informed of any requests directed to those States Parties to the NPT which possess nuclear explosive devices for PNE-related services.

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[12] IAEA-TECDOC-226.

[13] Bibliographical series, STI/PUB/21/38.

[14] Bibliographical series, STI/PUB/21/43.

[15] As reported in NPT/CONF.II/8.

III. CONCLUSION

20. Apart from the collection and dissemination of relevant information through INIS, the IAEA is not currently engaged in activities related to nuclear explosions for peaceful purposes.

Annex 1

REVIEW OF ARTICLE V

FIRST NPT REVIEW CONFERENCE

1975

The Conference reaffirms the obligation of Parties to the Treaty to take appropriate measures to ensure that potential benefits from any peaceful applications of nuclear explosions are made available to non-nuclear-weapon States Party to the treaty in full accordance with the provisions of Article V and other applicable international obligations. In this connexion, the Conference also reaffirms that such services should be provided to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used should be as low as possible and exclude any charge for research and development.

The Conference notes that any potential benefits could be made available to non-nuclear-weapon States not Party to the Treaty by way of nuclear explosion services provided by nuclear-weapon States, as defined by the Treaty, and conducted under the appropriate international observation and international procedures called for in Article V and in accordance with other applicable international obligations. The Conference considers it imperative that access to potential benefits of nuclear explosions for peaceful purposes not lead to any proliferation of nuclear explosive capability.

The Conference considers the IAEA to be the appropriate international body, referred to in Article V of the Treaty, through which potential benefits from peaceful applications on nuclear explosions could be made available to any non-nuclear-weapon State. Accordingly, the Conference urges the IAEA to expedite work on identifying and examining the important legal issues involved in, and to commence consideration of, the structure and content of the special international agreement or agreements contemplated in Article V of the Treaty, taking into account the views of the Conference of the Committee on Disarmament (CCD) and the United Nations General Assembly and enabling States Party to the Treaty but not Members of the IAEA which would wish to do so to participate in such work.

The Conference notes that the technology of nuclear explosions

for peaceful purposes is still at the stage of development and study and that there are a number of interrelated international legal and to other aspects os such explosions which still need to be investigated.

The Conference commends the work in this field that has been carried out within the IAEA and looks forward to the continuance of such work pursuant to United Nations General Assembly resolution 3261 D (XXIX). It emphasizes that the IAEA should play the central role in matters relating to the provision of services for the application of nuclear explosions for peaceful purposes. It believes that the IAEA should broaden its consideration of this subject to encompass, within its area of competence, all aspects and implications of the practical applications on nuclear explosions for peaceful purposes. To this end it urges the IAEA to set up appropriate machinery within which intergovernmental discussion can take place and through which advice can be given on the Agency's work in this field.

The Conference attaches considerable importance to the consideration by the CCD, pursuant to United Nations General Assembly resolution 3261 D (XXIX) and taking due account of the views of the IAEA, of the arms control implications on nuclear explosions for peaceful purposes.

The Conference notes that the thirtieth session of the United Nations General Assembly will receive reports pursuant to United Nations General Assembly resolution 3261 D (XXIX) and will provide an opportunity for States to discuss questions related to the application of nuclear explosions for peaceful purposes. The Conference further notes that the results of discussion in the United Nations General Assembly at its thirtieth session will be available to be taken into account by the IAEA and the CCD for their further consideration.

Annex 2

REVIEW OF ARTICLE V

THIRD NPT REVIEW CONFERENCE
1985

The Conference reaffirms the obligation of Parties to the Treaty to take appropriate measures to ensure that potential benefits from any peaceful applications of nuclear explosions are made available to non-nuclear-weapon States Party to the Treaty in full accordance with the provisions of article V and other applicable international obligations, that such services should be provided on a non-discriminatory basis and that the charge to such Parties for the explosive devices used should be as low as possible and exclude any charge for research and development.

The Conference confirms that the IAEA would be the appropriate international body through which any potential benefits of the peaceful applications of nuclear explosions could be made available to non-nuclear-weapon States under the terms of article V of the Treaty.

The Conference notes that the potential benefits of the peaceful applications of nuclear explosions have not been demonstrated and that no requests for services related to the peaceful applications of nuclear explosions have been received by the IAEA since the Second NPT Review Conference.